IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE CIVIL JURISDICTION

WRIT PETITION NO.902 OF 1993

Secretary)
Shri Sairam Education Trust)
Shivaji Nagar, Sanmansingh Road)
Bhandup (W), Bombay-78.).. Petitioner

Versus

1) Lalasaheb More)
R/o.Rambai Ambedkar Nagar)
Ghatkopar West, Bombay 75.)

2) The Head Master)
Jagruti Vidhyalaya, Shivaji Nagar)
Sanmansing Road, Bhandup (W))
Bombay 78.).. Respondents

Mr.V.D. Raut for the Petitioner.

Mr.Mihir Desai for Respondent No.1.

None present for Respondent No.2.

CORAM: SMT.NISHITA MHATRE, J.

DATED: 25TH AUGUST 2005

ORAL JUDGMENT :

. The Petitioner challenges the order dated 13th October 1992 passed by the Presiding Officer, School Tribunal, Bombay Region, Bombay in Appeal No.GEN/158/BOM/86/1992 allowing the Appeal filed by Respondent No.1. The order dated 31st March 1992 issued by the Petitioner terminating the services of Respondent No.1 with effect from 30th April 1992 has been set aside. The Tribunal has directed the Petitioner to reinstate Respondent No.1 to his original post and to

pay him back wages from 1st May 1992 till reinstatement.

2. Respondent No.1 was appointed on 13th June 1991 as an Assistant Teacher. This appointment was for a period of one year from 19th June 1991 to 13th April 1992. The services of Respondent No.1 came to an end by a letter dated 31st March 1992 issued by the Petitioner terminating his service with effect from 30th April 1992. Aggrieved by this order, Respondent No.1 challenged the termination of his services before the School Tribunal by filing Appeal under Section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977, hereinafter referred to as "the Act". Ex-parte ad-interim relief was granted on 23rd April 1992 and Respondent No.1 continues to be in service even till today. In the Written Statement filed by the Petitioner, it is contended that Respondent No.1 had been employed only for a temporary period for which approval has been granted by the Education Department. According to the Petitioner, the services of Respondent No.1 came to an end since approval for the subsequent period was not granted. It was also contended that Respondent No.1 was not working satisfactorily and, therefore, his services came to be terminated.

3. The Tribunal on the assessment of the pleadings and evidence before it, came to the conclusion that

Respondent No.1 should be reinstated to his original post. Mr.Raut appearing for the Petitioner submits that Respondent No.1 is not entitled to reinstatement since he was appointed only for a temporary period and, therefore, in view of the judgment of the Supreme Court in the case of *Bharatiya Gramin Punarrachana Sanstha* vs. *Vijay Kumar and others*, **(2002) 6 SCC 707**, his services came to an end by efflux of time. It was also contended that the School Tribunal was wrong in deeming that Respondent No.1 is confirmed in service after a period of two years. He submits that when an employee is appointed against a vacancy only for one academic year, he is not entitled or liable to be continued in the same post beyond that period.

4. Mr.Desai appearing for Respondent No.1 rightly points out that the Tribunal has considered the evidence on record and has arrived at its conclusions. He submits that Respondent No.1 was appointed against a clear vacancy and ought to have been appointed for two years. Under Section 5 of the Act, when there is a clear vacancy, a person is to be appointed on probation for two years. Not having done so, the Petitioner could not terminate the services of Respondent No.1. He further submits that obtaining sanction from the Government for the post is not a matter which is the concern of Respondent No.1 but it is a matter over which

the Petitioner and the Government have control. The Petitioner, according to the learned Advocate, ought to have established with evidence before the Tribunal that although sanction was sought for Respondent No.1's appointment as a probationer for two years, it had been explicitly refused.

5. The Tribunal has found that the Petitioner did not bring any evidence on record to establish that Respondent No.1 had not been appointed against a clear vacancy. The Tribunal has rightly concluded that if Respondent No.1 had been appointed against a temporary vacancy, it was for the Petitioner to establish that fact. Furthermore, Section 5 deals with probation and appointments of employees to a clear vacancy for a probationary period of two years. The services of the probationer may be terminated within the period of two years without holding an enquiry. However, it was necessary for the Petitioner to show some semblance of poor work or misbehaviour on the part of Respondent No.1. The Tribunal has found that the Petitioner had not produced any evidence indicating that the behaviour or the work of Respondent No.1 was found wanting nor was there anything on record to show that the Managing Committee of the Petitioner had passed any resolution deciding to terminate the services of Respondent No.1 on the ground of his misbehaviour or misconduct. In such

circumstances, in my view, the Tribunal cannot be faulted for the findings arrived at by him.

6. The judgment of the Supreme Court in the case of *Vijay Kumar* (supra) cited by the Petitioner, is not applicable to the facts and circumstances of this case. In that case, the Supreme Court was dealing with the question as to whether there can be deemed confirmation of service. The Supreme Court while considering Section 5 of the Act has held that in that case the Respondent or workman was appointed for the period of two years and was not on probation. The employee was appointed against a temporary vacancy and, therefore, he was entitled to remain in service till the end of the academic year. In the present case, there is nothing on record to indicate that the Respondent No.1 was not appointed against a clear vacancy nor is there anything in the Written Statement to indicate that the appointment was only against a temporary vacancy or leave vacancy.

7. The order of the School Tribunal upheld. Rule discharged. No order as to costs.